

Exhibit 2

UNITED STATES DISTRICT COURT  
SOUTHERN COUNTY OF NEW YORK  
CASE NO. 07-CV-3215

-----X  
MILAGROS IMPORTS LIMITED,  
A NEW YORK CORPORATION,

Plaintiff,

vs.

PROGRESS VANTAGE LIMITED, A FOREIGN CORPORATION,

Defendant.  
-----X

DEPOSITION OF: IRENE-LUISA TORRES

TRANSCRIPT of the stenographic notes of  
the proceedings in the above-entitled matter, as  
taken by and before ELIZABETH A. WILLESKI, RPR,  
and a Notary Public, held at the office of  
STORCH AMINI MUNVES, PC, 2 Grand Central Tower,  
New York, New York 10017, on January 30, 2008,  
commencing at 9:30 in the morning.

1 Q. So your understanding is Progress  
2 is either a successor to Goddess or they are  
3 part of the same corporation?

4 A. That is correct.

5 Q. So you just testified that you  
6 first learned about BETTA through Progress,  
7 correct?

8 A. Yes.

9 Q. Prior to learning about the BETTA  
10 mark from Progress, you had never heard of it?

11 A. No.

12 Q. And prior to 2004, Milagros had  
13 never sold any goods bearing the BETTA mark?

14 A. That's correct.

15 Q. All right. So you found out that  
16 BETTA was available from talking to William  
17 Wong?

18 A. Well, I started to inquire through  
19 e-mails regarding what was the status of it,  
20 because, basically, I have worked for companies  
21 where we are considered the vendor to retailers,  
22 to major retailers. That is my career, and that  
23 is exactly what I was looking to set up when I  
24 started my own business, i.e., someone who a  
25 vendor comes to me as a resource, and I would

1 have split my company into -- usually, you have  
2 a house brand, which goes to your department  
3 stores, your moderate tier, and then I had an --  
4 I would like to have set up a signature or the  
5 collection which would be for higher end in  
6 different divisions or boutique stores, so I was  
7 looking for a name that I could make my own to  
8 be used totally for myself, my company, and  
9 having worked for various companies where they  
10 licensed out a name or a mark. The problem that  
11 you were into is that you are under their  
12 control of that particular licensor. Being a  
13 licensee, you are subjected to everything that  
14 the licensor wants, and when I started my own  
15 company, I didn't want that, I wanted a name,  
16 just like my own signature, to be that which I  
17 could build and take the time, because when you  
18 were a new company, you need the time for the  
19 vendors to come back on your reputation, and  
20 based on my reputation and my years in the  
21 industry, it takes time for them to see if they  
22 want to buy what you are selling, so you might  
23 need a few years before something launches or  
24 takes off or with a license, you have to pay  
25 royalties, initial fees, and, sometimes, if you

1 don't give the licensor what they want, you are  
2 subject to have your name pulled or the brand  
3 that you are using. I didn't want that. I was  
4 looking for something where I could create a  
5 store, and turn around and sell it, and I can  
6 control it. So in knowing -- having been  
7 friends and in business, and friends with the  
8 Wongs, I knew they said they had been using  
9 BETTA in China at one point. I didn't know  
10 about a registration until I went to Hong Kong,  
11 in November of 2003, and, basically, prior to  
12 that, I was looking to see -- I was trying to  
13 find out, inquire, what was going on with this  
14 name, BETTA, because, again, if it was something  
15 that was owned by someone else, in control of  
16 someone else, I wanted no part of it, so  
17 that's...

18 MR. MORETTI: Okay. You have  
19 answered.

20 MR. LEAVITT: I'm going to ask if you  
21 cannot instruct the witness. You can object,  
22 but just don't obstruct her testimony.

23 MR. MORETTI: I'm not obstructing her  
24 testimony. Were you finished with your answer?

25 THE WITNESS: Yes, I was.

1 Q. You didn't -- Milagros did not use  
2 the BETTA mark -- strike that.

3 Before Milagros used the BETTA  
4 mark, you asked Progress's permission to do  
5 that, right?

6 A. No, I did not.

7 Q. You did not? So it is your  
8 testimony that you never used the permission?

9 A. No, I did not. I made inquiries to  
10 what it was, and the Wongs would not answer that  
11 in writing, so I was constantly trying to find  
12 out, is it a license? Is it owned by somebody?  
13 What is the story with it? And, basically, they  
14 said, we'll talk about it when you come to Hong  
15 Kong, and we did have a conversation, and I  
16 found out: A. At that point, I believe they  
17 said they had not registered it yet, either in  
18 China or began the process in China. It was not  
19 registered in The United States. It was not  
20 used in the US.

21 MR. MORETTI: I'm going to ask you to  
22 slow down. You are going too fast, just to make  
23 sure she can get it.

24 A. That was basically it. I was  
25 making inquiries in to what the status was. Had

1 it been owned or anything, I would not have  
2 touched it.

3 Q. Well, you understand that the Wongs  
4 owned it, as you use that phrase, in China,  
5 correct?

6 A. Maybe I should correct "owned." I  
7 can't say they owned it in China, because I  
8 didn't know whether they owned it in China or  
9 not. I know they had claimed to have registered  
10 it or be in the process of registering it.

11 Q. And is it your understanding, in  
12 connection with The United States, that a party  
13 who registers a trademark is the owner of that  
14 trademark? Is that your understanding?

15 A. In the US or China? No, it is  
16 based upon your use of it. You can register it.  
17 You have so many years, and if you haven't used  
18 it, the registration becomes null and void, and  
19 you have to reapply for it.

20 Q. So your understanding is that the  
21 registered owner of a trademark is not  
22 necessarily the actual owner of the trademark?

23 MR. MORETTI: Objection to form.

24 A. I don't understand what your  
25 question is really. I'm not a legal person. I

1 company, and I also own the company, so I'm not  
2 quite sure what you mean by an individual. Yes,  
3 I am an individual. I am an entity, but I have  
4 the right to testify on behalf of the company.

5 Q. You are someone authorized to bind  
6 the corporation, Milagros?

7 A. That is correct.

8 Q. Okay. When was Milagros  
9 established?

10 A. October 1st, 2003, that is when it  
11 was incorporated.

12 Q. Prior to Milagros being  
13 incorporated, where did you work, if anywhere?

14 A. I worked for another company --  
15 well, prior to Milagros, I know I was not  
16 working at that moment. I had left a company  
17 that I had worked for in, I think it was July or  
18 August of 2003.

19 Q. What company was that?

20 A. Ben Burger, LLC.

21 Q. What did Ben Burger do?

22 A. Ben Burger is in the same capacity  
23 as my company. It is a company that buys --  
24 sorry, produces footwear under various  
25 manufacturers or slippers or socks in cold



1 weather for, you know, a vendor for retailers,  
2 for major retailers.

3 Q. Does Ben Burger own any brands or  
4 trademarks?

5 A. At the time, this company is  
6 defunct at this moment.

7 Q. In 2003?

8 A. They had their own house brand  
9 called Ben Burger, and they also had the license  
10 for Laura Ashley.

11 Q. They had a license for that?

12 A. And various others.

13 Q. Various other licenses?

14 A. Yes, whether they are their own  
15 license, yes.

16 Q. And you came to know the Wongs in  
17 your work at Ben Burger?

18 A. No.

19 Q. How did you come to know the Wongs?

20 A. I knew Mr. Wong. I met them early,  
21 in the early '90s. I guess I worked for another  
22 company where I was the director of footwear for  
23 their production and product development  
24 overseas, and Mr. Wong worked as a QC, quality  
25 control person, for a company called Splendid

1 that the "them" was retailers.

2 A. Correct.

3 Q. So that "them" does not refer to  
4 the factories?

5 A. No, it does not.

6 Q. If you look at the third page, the  
7 top line: "Please advise if BETTA is usable in  
8 the states as of yet." See that?

9 A. Yes.

10 Q. You're asking William if it is okay  
11 to use BETTA in the US, correct?

12 A. No, I'm not. I'm trying to find  
13 out what BETTA is, and what is the situation  
14 with BETTA, because, as I stated previously, I  
15 was looking for a name that I could take and  
16 have as my own use, and BETTA -- I liked BETTA.  
17 It was outside the country and US people that  
18 like things that are new and from foreign  
19 countries, and I liked the name, and I was  
20 looking for what is the status of it, does it  
21 belong to anybody. I was trying to find out.

22 Q. You were trying to find out whether  
23 it was okay to use BETTA in the US?

24 A. I was trying to find out what was  
25 the status of it. If it was owned by someone,

1 then I would not have touched it, and that is  
2 what I stated constantly.

3 Q. Where did you state that?

4 A. Previously, in my testimony here.

5 Q. You said I constantly said.

6 A. I have constantly stated that.

7 Q. Where?

8 A. When I went to Hong Kong and I did  
9 speak to William, and even in e-mails prior to  
10 my going, I think, in October, again, I had been  
11 asking very specific questions, because I needed  
12 a name, a brand, whatever you want to call it, I  
13 needed a name that I could take and make my own.  
14 I had a very short time to develop packaging an  
15 entire line and I had to decide where was I  
16 going to put my house brand, was I going to have  
17 to put my name there for lack of anything better  
18 at a moment or was I going to be able to use  
19 something. I had to be able to start to plot  
20 what direction I was going in, and I was very  
21 specific with him when I said in my  
22 conversations with the guys, we can't have  
23 something that is factory brand-specific or  
24 brand specific, and by that, it means factory  
25 brand specific means that it is locked into one

1 factory, owned by a factory, or that it is a  
2 brand that is specific onto somebody having it.  
3 In other words, if I can't have it and control  
4 it and do what I want with it, then I would wash  
5 my hands of it, and, again, I did not get  
6 answers from the Wongs, because they kept  
7 telling me, we'll talk about it when you get to  
8 Hong Kong.

9 Q. Please advise if BETTA is useable  
10 in the States as of yet is not a request to see  
11 if it was okay? If it is owned by someone?

12 MR. MORETTI: Don't argue with the  
13 witness. You are asking the same question over  
14 and over again.

15 A. But I --

16 MR. MORETTI: Irene...

17 THE WITNESS: Okay.

18 MR. MORETTI: The record speaks for  
19 itself, and at this point, I think it is getting  
20 a little argumentative.

21 MR. LEAVITT: That's fine. The  
22 testimony is what it is.

23 Q. If you look further down, the  
24 paragraph that starts, William, I know that loop  
25 shag will really knock the socks off the market.

1 William to you, correct?

2 A. Well, I guess it starts off with  
3 Sarah, my answers to Sarah, and then I guess it  
4 starts with William, yes.

5 Q. All right. That is the first  
6 e-mail, August 11, 2003 starting on page 2.

7 A. Yes.

8 Q. Turn to the last page of that  
9 e-mail. See where it says re: BETTA brand?

10 A. Yes.

11 MR. MORETTI: I'm sorry, what line?

12 MR. LEAVITT: A little bit more than  
13 halfway.

14 MR. MORETTI: Got it. Thank you.

15 Sorry.

16 Q. It says: "My friend in Australia  
17 still have not yet out sourced out with his  
18 partner. I think there could be some problem."  
19 It says: "I am registering this brand in the US  
20 and can be used very soon." You see that?

21 A. Yes.

22 Q. So this was sent on August 11,  
23 2003, right?

24 A. Um-hum.

25 Q. So as of that date, you knew that

1 Progress was going to be registering the BETTA  
2 mark in the US?

3 A. No, I didn't know, outside of him  
4 saying that's what he was going to do. As you  
5 can see, in later e-mails, that status seems to  
6 change, because there -- there isn't -- he says  
7 here that it couldn't be used because he has a  
8 problem with his friend in Australia at this  
9 time. I didn't find out who his friend was  
10 until later. It was Kim Gray, he's planning to  
11 register it, but I was -- this is simply  
12 inquiry. I was just inquiring. In fact, this  
13 e-mail, I don't even think I inquire about  
14 anything.

15 Q. He told you he was registering it  
16 in the US?

17 A. He said he was planning, but later  
18 in my conversations in Hong Kong, which took  
19 place in November, he was not planning on it,  
20 so.

21 Q. Further down, my friend is going to  
22 Gallery Lafeye to see if he can get a corner  
23 especially for BETTA slippers. Do you have  
24 where that is?

25 A. I have no idea.

1 Q. Progress did loan you some money,  
2 correct?

3 A. That is correct.

4 Q. What did you use that money for?

5 A. I used that money for various  
6 expenses in my business.

7 Q. Like what?

8 A. Just general operating, various  
9 expenses. It didn't go to one thing, just  
10 day-to-day operations, and, etc., of business.

11 Q. Start-up cost?

12 A. It wasn't start-up cost, it was a  
13 loan, and it was for my use in my business.

14 Q. When did they loan it to you?

15 A. It was sent to John Lau and he sent  
16 \$25,000 each in January of 2004.

17 Q. Now, in or around October 2003, you  
18 were making arrangements to take a trip to Hong  
19 Kong, correct?

20 A. That's correct.

21 Q. And where did you stay when you  
22 were in Hong Kong?

23 A. Well, originally, Flicker had  
24 booked me a hotel close to their office.

25 Q. My question is, where did you stay?

1 Your testimony is you never asked Progress for  
2 permission to use BETTA in the US; is that  
3 right?

4 A. That is correct, I inquired about.

5 Q. If you look at Number 3.

6 MR. MORETTI: I just want to make  
7 sure her answer is finished, and she said she  
8 inquired about that, and I think you might have  
9 cut her off. Were you finished?

10 THE WITNESS: No, I wasn't.

11 A. I inquired in various shapes and  
12 forms as to what was the status of it, because I  
13 was trying to get at whether it was something,  
14 the name was owned by someone, it was licensed  
15 by someone or if it was free, just to take and  
16 use that name, because my ultimate goal was to  
17 get a name and take it and use it myself and be  
18 owned by me.

19 Q. Are you finished?

20 A. Yes, I am now.

21 Q. Look at Number 3, four lines down  
22 -- strike that.

23 "Please ask William if the BETTA  
24 brand can be used in the US." You see that?

25 A. Yes, I see it.



1 Q. The reason I ask if it is, then I  
2 would ask you if you can use it for my line."  
3 Do you see that?

4 A. You said midway down?

5 MR. MORETTI: I think he said...

6 Q. You can read all of the Paragraph  
7 Number 3, you can read it all.

8 MR. MORETTI: Once you have read it,  
9 he'll ask you a question.

10 A. Okay. I have finished it.

11 Q. Starting on the fourth line, there  
12 is a sentence that says: "The reason I ask is  
13 if it is, then I would ask you if I can use it  
14 for my line." Do you see that?

15 A. Yes, I do.

16 Q. And it is still your testimony that  
17 you weren't asking permission from Progress to  
18 use BETTA in the US?

19 A. I was not. I was, again, inquiring  
20 as to whether, if he owned it, would I have to  
21 ask for its use, but, again, I did not want to  
22 ask for that use. I wanted it for myself.

23 Q. Is there anywhere where you talk  
24 about ownership in this Paragraph Number 3?

25 A. You're asking me if I talked about

1 ownership?

2 Q. Yes.

3 A. No. No.

4 Q. Okay. And I don't want to be  
5 argumentative, but I want to be clear. It is  
6 your testimony, that your words, "I would ask  
7 you if I can use it," is not asking for  
8 permission; is that correct?

9 A. That is correct. It is an inquiry.  
10 I am inquiring.

11 (Defendant's Exhibit-10 was marked  
12 for identification.)

13 MR. LEAVITT: Please do not confer  
14 with the witness while --

15 MR. MORETTI: I wasn't conferring  
16 with the witness. There was no question  
17 pending. You were thumbing through your  
18 exhibits.

19 MR. LEAVITT: I just want to make  
20 sure the record was clear. I was not thumbing  
21 through my exhibit. I handed you the next  
22 exhibit. I handed you the exhibit and you had  
23 the exhibit that was going to be marked.

24 MR. MORETTI: Excuse me. I stand  
25 corrected. You were not going through your

1 re: BETTA?

2 A. Yes.

3 Q. Now, this is from you to Lynn,  
4 correct?

5 A. That's correct.

6 Q. So this is all your writing,  
7 speaking as it were?

8 A. Yes.

9 Q. It says: "Noted, it can be used in  
10 the USA, but we can't use in Australia since...  
11 This is great news. We now have a license. See  
12 that?

13 A. Yes.

14 Q. What did that mean to you?

15 A. Well, perhaps my use of license is  
16 incorrect. Maybe I meant brand, mark, whatever,  
17 and I guess this is in following with William  
18 and Lynn, in William's e-mails, where he says  
19 his Australian friend is having problems, maybe  
20 it can be used or maybe it couldn't be used, and  
21 why don't I take Laura Ashley and go for it, and  
22 I guess at this point, it is an answer to --  
23 maybe I should have said, oh, that's great, I  
24 have a brand now to use, but it is not meaning  
25 -- maybe it is the wrong term to use, license,

1 brand, but it is basically now I have something  
2 I can use.

3 Q. It is your testimony that this is  
4 an incorrect usage of the word license here?

5 A. I would say so, because it is not  
6 really a license. I mean, it is a name or a  
7 brand, if you want to call it a brand.  
8 Basically, it is a name.

9 Q. Okay. Did you ever correct that  
10 mistake to William or Lynn?

11 A. Are you saying did I go back and  
12 rewrite this e-mail and say, oh, excuse me, I  
13 didn't mean license.

14 Q. I'm asking if you ever clarified  
15 with William and Lynn that you didn't believe  
16 you had a license?

17 A. I think when I met with them in  
18 Hong Kong in November, I do believe that it was  
19 clear at that point what I was looking for, and  
20 if I had not been able to take this and use this  
21 name, this mark, this whatever you want to call  
22 it, for my own, I would not have used it. They  
23 were what I considered friends in business,  
24 because I knew them for many years. Sometimes,  
25 when you write something, you may not write it

1       correctly, you don't go back and say, I didn't  
2       do that or I didn't do this, you don't do it.  
3       You figure people understand what you mean, and  
4       I'm pretty sure, after my meeting in Hong Kong  
5       and my conversations with them, and my right to  
6       go forward on my own, I believe that was very  
7       clear to me.

8               Q.       You testified you were friends with  
9       William and Lynn?

10              A.       Correct.

11              Q.       Would you consider your  
12       relationship to be more than a business  
13       relationship?

14              MR. MORETTI:   When?   At what time?

15              Q.       End of September, beginning of  
16       October, 2003?

17              A.       I thought we were pretty friendly  
18       and we had a strong business relationship, yes.  
19       We were both friends and we also had business  
20       dealings.   Business was separate from  
21       friendship.

22              Q.       Okay.

23                      (Defendant's Exhibit-11 was marked  
24       for identification.)

25              Q.       I placed before you a document

1 marked for identification as Defendant's

2 Exhibit-11. Do you see that document?

3 A. Yes, I do.

4 Q. This is a three-page e-mail string,  
5 correct?

6 A. Yes.

7 Q. And that, jambi face, that's your  
8 e-mail address?

9 A. Yes.

10 Q. And we start on the first page,  
11 October 2nd, 2003: "Dear William and Lynn."  
12 That is you writing to William and Lynn,  
13 correct?

14 A. That's correct.

15 Q. Okay. In the second paragraph, it  
16 says: "I'm sorry, but I need to work on the  
17 BETTA packaging. Prior to my arriving, I will  
18 working with Arnell on Sunday, but I really need  
19 to know the parameters of the license." Do you  
20 see that?

21 A. Yes, I do.

22 Q. Is that the same mistake that you  
23 made in Exhibit-10?

24 A. I would say so.

25 Q. If you look at Number 2, under

1 Paragraph 2: "Do we have permission to use the  
2 font in the USA. If not, please tell me what it  
3 is, because if I can use it indicate -- strike  
4 that -- if I can use it, wouldn't mind -- see  
5 that?

6 A. Yes.

7 Q. That font that you are referring to  
8 is the BETTA font that Progress used in China,  
9 correct?

10 A. Yes.

11 Q. You were asking them if you could  
12 use that font, correct?

13 A. I was, again, trying to -- this was  
14 all preliminary stages. I was trying to find  
15 out what was the parameter of this BETTA, okay,  
16 I referred to it as a license, I mean, it is not  
17 a license, if it is not known. It was a name, a  
18 mark, that is incorrect that I called it a  
19 license, but, basically, this was inquiring,  
20 and, again, you can see that the direction here  
21 is for me to continue forward, because I'm  
22 developing a line. I'm developing packaging.  
23 It is all, again, what I'm doing for myself  
24 because, again, what I was looking to do with  
25 this, and, again, I'm also very clear in the

1 e-mail that where I state in talking with both  
2 Ben and Burt. This BETTA name can't be  
3 brand-specific or factory brand-specific, and  
4 that's very important, because in that alone, it  
5 says specifically what I have been trying to say  
6 here, that factory brand specific, meaning it  
7 can't have its onus to one factory or be owned  
8 by a factory or brand specific, meaning that it  
9 can't be owned as a brand, okay, by someone  
10 else, so to speak, and I do use brand and  
11 license interchangeably with name or whatever,  
12 so, again, if that is incorrect, I should not  
13 have used the term license, but that is an error  
14 on my part for saying that.

15 Q. Okay. In your opinion -- strike  
16 that.

17 You testified that a brand or mark  
18 that was associated with one factory would have  
19 a very tough time establishing itself in the US  
20 market. Is that a fair characterization of your  
21 testimony?

22 A. Can you be specific? I don't  
23 believe I testified that.

24 Q. You were testifying that the brand  
25 cannot be tied to one factory.



1           A.       I'm saying, in my opinion, what I  
2       was looking for and what I wanted to go forward,  
3       I did not want a factory brand-specific or a  
4       brand-specific mark, license, logo.

5           Q.       And you didn't want a factory  
6       specific mark because why?

7           A.       Because if it is owned by a  
8       factory, you can only produce with one factory,  
9       then you are limited to what that factory does,  
10      plus, I wasn't interested in -- I'm starting my  
11      own business. I want something I can control,  
12      where I can have use of something wherever,  
13      whenever, however I wanted, and I would not want  
14      to be tied to a factory, a conservative brand,  
15      like taking a Laura Ashley license, etc.

16          Q.       Would retailers in the US have any  
17      problems in dealing with a factory specific  
18      brand?

19          A.       I'm not quite sure what you mean by  
20      that.

21          Q.       Strike that. We'll get to that  
22      later.

23                    If you look down at Number 6, you  
24      see that paragraph?

25          A.       Yes.

1 Q. See six lines up, it says: "It is  
2 the same way we did when we launched the Karen  
3 Neuberger and Laura Ashley lines." Do you see  
4 that?

5 A. Yes, I do.

6 Q. Those brands were launched under  
7 licenses, correct?

8 A. Yes.

9 Q. If you look at page 2, Number 7.

10 A. Yes.

11 Q. It says: "Please advise if there  
12 are royalties we would have to pay to BETTA or  
13 Goddess." Do you see that?

14 A. Yes.

15 Q. Royalties are normally paid under a  
16 license arrangement; is that right?

17 MR. MORETTI: Objection. You can  
18 answer if you know.

19 A. Yes.

20 Q. And at this point in time, on  
21 October 2nd, 2003, you under that, you might  
22 have to pay royalties to Goddess, right?

23 A. No, I did not understand that. I  
24 was trying to find out whether this name was  
25 owned by Goddess, held by Goddess or somebody

1 else. This was simply an inquiry. I was trying  
2 to get to the bottom of this, to see if this was  
3 what I wanted to use for myself.

4 Q. You thought that was possible that  
5 there would be royalty payments?

6 MR. MORETTI: Objection.

7 MR. LEAVITT: What is the objection?

8 MR. MORETTI: To form. You can  
9 answer.

10 A. Can you repeat that, please.

11 Q. Sure. In Number 7 -- strike that.

12 When you were writing the e-mail,  
13 is it fair to say that you believed it was a  
14 distinct possibility that royalty payments would  
15 have to be made based on US sales of the BETTA  
16 mark?

17 MR. MORETTI: Objection to form. You  
18 can answer.

19 A. No. There was nothing established  
20 at this point. I was trying to inquire. I was  
21 trying to find out whether BETTA was with  
22 Goddess or it wasn't with Goddess. It was an  
23 inquiry, because if it was owned by someone,  
24 then I would not be interested in using the  
25 name.

1 Q. So is it your testimony that if  
2 Progress or Goddess had said to you, yes, there  
3 are royalty payments, you would not have used  
4 BETTA?

5 A. That's correct.

6 Q. Now, you were talking before about  
7 factory specific brands -- strike that.

8 MR. MORETTI: I'm sorry, what  
9 paragraph are you looking at?

10 MR. LEAVITT: It is Paragraph 8 now.

11 Q. "BETTA would be used for my entire  
12 line." Do you see that paragraph?

13 A. That is correct.

14 Q. "I don't see this as a problem, do  
15 you?" Why were you asking them if it would be a  
16 problem?

17 A. Well, it would be a problem if they  
18 owned it, because, therefore, I would be again  
19 having a license, which was not what I was  
20 looking for, and I'm telling them, again, I was  
21 very honest with them and open with them that  
22 I'm looking, this particular name, I would be  
23 looking to use for the base product of my  
24 collection or what I would be selling into where  
25 we call our bread and butter, which is like our

1 department store mid-tier chains, etc., so,  
2 basically, that is it. This is what I would be  
3 using it for, so I'm being very honest as to my  
4 set-up of where I would be using it.

5 Q. Do you know of anywhere, e-mails,  
6 letters, where in writing you asked Lynn or  
7 William or Progress if you were the owner of the  
8 BETTA mark in the US?

9 A. No.

10 Q. Looking further down, Paragraph 8,  
11 starting at the end, five lines up, it says: "I  
12 know that you will not have a problem with Arda  
13 making all the packaging, as I have done in the  
14 past." Do you see that?

15 A. Yes.

16 Q. It ends with question marks, right?

17 A. Yes.

18 Q. Were you making an inquiry as to  
19 whether William or Lynn or anyone at Progress  
20 wanted packaging done for BETTA products in the  
21 US by someone other than Arda?

22 A. No, I'm simply stating what my  
23 direction would be, because, in the past, I had  
24 used Arda for companies I worked for. I  
25 specialized all the packaging, so everything was

1           A.       It is not identical, but there are  
2 differences. I did change the spacing where I  
3 put it, how I used it.

4           Q.       My question is about the font. Do  
5 you know what a font is?

6           A.       Yes, I know. I understand. There  
7 was no font name on it.

8           Q.       Did you change the font?

9           MR. MORETTI: At any time, did she  
10 change the font?

11          MR. LEAVITT: Did she change the  
12 font.

13          A.       If you say, if you are not  
14 including spacing, how it is placed, size,  
15 etcetera, I guess not.

16          Q.       Okay. Going back up to Paragraph  
17 Number 1, with the parenthesis after it, when it  
18 says, "I can choose my own colors."

19          A.       Yes.

20          Q.       On the fourth line down, it says:  
21 "As time is an issue, I would like to put the  
22 packaging together or I'll never get it in time  
23 for the market. I would show you both, and if  
24 you don't like it, we can make changes." Do you  
25 see that?

1 A. Yes.

2 Q. Why were you going to show them the  
3 packaging?

4 A. Well, first of all, this is prior  
5 to my arriving in Hong Kong. I needed to move  
6 forward with what I was going to do, and a lot  
7 of it was contingent upon what would happen in  
8 my discussions with them in Hong Kong, and if  
9 the discussion should be such that there was  
10 something else controlling BETTA and I couldn't  
11 take it and use it for my own, whatever the  
12 case, maybe I would have taken my signature name  
13 and put it into the packaging and use it for my  
14 generic house brand. At this point, I had to do  
15 something. I wasn't really getting very direct  
16 answers from them as far as did they own the  
17 rights to BETTA? Was it actually owned? What  
18 was the story? So, basically, I had to do  
19 something, move forward and take it from there  
20 when I got to Hong Kong, and, again, this is a  
21 preliminary -- there was nothing -- all you see  
22 are my inquiries and what was going on and how I  
23 have to move forward, and nothing was decided  
24 for what I was going to do and take and use  
25 until I got to Hong Kong and that is one month

1 later.

2 Q. In Paragraph Number 3, midway down.

3 A. Yes.

4 Q. It says: "Noted that we can't put  
5 the "R" trademark or "TM" as the process is not  
6 complete in the USA. Have you filed the  
7 paperwork yet?" You understand that Progress  
8 was undertaking to file an application for  
9 trademark in ownership at The Us Patent and  
10 Trademark Office; is that correct?

11 MR. MORETTI: Sorry, what portion  
12 were you reading from?

13 MR. LEAVITT: Paragraph 3, on page 2  
14 we were looking at Paragraph 3, have you filed  
15 the paperwork yet? Do you see that?

16 A. Yes, I do.

17 Q. You understand on October 3, 2003,  
18 that Progress was undertaking to file an  
19 application for ownership of the BETTA trademark  
20 in The Us Patent and Trademark Office, right?

21 A. He had stated that.

22 Q. If not, please let me know, as I am  
23 having Raymond to help see if it can be done  
24 quicker. Do you see that?

25 A. Yes.



1 Q. To your knowledge, did Raymond ever  
2 take any action concerning BETTA with the US  
3 Patent and Trademark office prior to 2005?

4 MR. MORETTI: Prior to 2005.

5 A. He did not, because William --  
6 there was another issue that William said, we'll  
7 discuss it when you get here. When I got to  
8 Hong Kong, that's when I found out it had not  
9 been registered, and, at that point, I did say  
10 to him, he had never used it, and that's when I  
11 found out he had no intention to use it, because  
12 to get into the US market, you had to have  
13 connections. He was too busy with the Europe  
14 market. The US market was slow, too cheap, and  
15 he didn't want to be bothered. And at that  
16 time, when I found out I could take the BETTA  
17 mark and go and run with it, he asked me if I  
18 did certain packaging, and he liked it, could he  
19 use it for his BETTA in China. I said, sure, I  
20 don't have a problem unless it shows up  
21 someplace else, then I can have an issue with it  
22 with my use in the States. I said, I'm going to  
23 take it and register the mark. He said, you  
24 spent a lot of money with all your cost for  
25 starting the business. I'll do the favor for

1 you and I will register it for you. Okay. That  
2 is why I felt that the mark was mine and I was  
3 moving forward with it.

4 Q. Prior to the Neet Feet controversy,  
5 did you ask -- strike that.

6 (A brief recess was taken.)

7 Q. I just want to clean up a couple of  
8 things. You testified that William Wong had no  
9 contacts in the US and that he needed someone to  
10 establish BETTA in the US. Is that a fair  
11 characterization of your testimony?

12 MR. MORETTI: Objection, but you can  
13 answer it.

14 A. My testimony here?

15 Q. Yeah.

16 A. I don't recall testifying that he  
17 had no contacts here.

18 Q. All right. Let me ask the  
19 question, if Progress wanted to sell directly to  
20 retailers in the US, would that be easy to do?

21 MR. MORETTI: What time period?

22 MR. LEAVITT: 2003.

23 A. No, it would not have been, not as  
24 a manufacturer.

25 Q. Why not?

1 received a cease and desist letter from Neet  
2 Feet?

3 A. Correct.

4 Q. They were asserting that they had  
5 the -- strike that.

6 They asserted that they owned the  
7 trademark rights to BETTA in the US?

8 A. Yes, outside of Australia,  
9 including the US.

10 Q. The first page here is an e-mail  
11 from you to Lynn and William.

12 A. Correct.

13 Q. In this e-mail, you are informing  
14 them about the cease and desist letter and Neet  
15 Feet's contentions, correct?

16 A. Roughly, yes.

17 Q. And there are some attachments to  
18 this, correct?

19 A. Yes.

20 Q. Now, if you look at the last page,  
21 that is a record from The United States Patent  
22 and Trademark Office, correct?

23 A. Yes.

24 Q. And that is a record that you  
25 personally found in or around March 2006?

1 A. Yes.

2 Q. Now --

3 A. Well, I can't say -- excuse me --

4 may I say something?

5 Q. Sure.

6 A. I don't know if this was me finding

7 this or if the attorney I worked with at

8 Christensen, when he went to look, he pulled

9 that up. I can't really recall. I do see some

10 strange marks as to where it came from.

11 Q. If you look at the first page of

12 your e-mail, page 1, see the paragraph that

13 begins "they bought"?

14 A. Okay. Um-hum.

15 Q. Now, look at the last sentence of

16 that paragraph. It says: "We have found yours,

17 which I am attaching a copy of." Do you see

18 that?

19 A. Okay. Fine. That was the one I

20 looked at.

21 Q. That refreshes your recollection

22 that that is what you attached?

23 A. Yeah.

24 Q. Still on that paragraph, the third

25 line down, it says: "I am not sure if William

1 will remember, but when we first started this  
2 endeavor, we had a search done and never found  
3 BETTA registered by any Australian company  
4 here." Do you see that?

5 A. Yes.

6 Q. Who did that search?

7 A. I believe it might have been  
8 Raymond.

9 Q. I'm sorry, where were you reading  
10 from?

11 A. Second paragraph, starting third  
12 line, I'm not sure.

13 Q. Now, you testified earlier that you  
14 were shocked when you found out that Progress  
15 Vantage was registering the BETTA mark in its  
16 own name. Do you recall that testimony?

17 A. Yes, I did.

18 Q. Can you explain to me -- strike  
19 that.

20 Is there anywhere in this e-mail  
21 where you express that shock?

22 A. Well, I don't express that shock,  
23 because at this point, it just shows who  
24 actually filed the application. There is  
25 nowhere in this particular page that shows --

1 explains that the mark was filed for someone  
2 else, and that was later on, you know, this was  
3 like a first page. I didn't know where to look  
4 for that, and that was brought out to me by the  
5 attorney, and when he checked it fully, this has  
6 not been done for anyone, especially me. The  
7 mark was supposed to have been registered for  
8 me.

9 Q. If you look at that last page, you  
10 see there is a circled item that says owner?

11 A. Yes.

12 Q. That says Progress Vantage,  
13 Limited, right?

14 A. That is correct.

15 Q. You saw this. You knew that  
16 Progress was registering as the owner of the  
17 mark.

18 A. I just knew they were registering  
19 it.

20 Q. So when you look, if you recall  
21 when you looked at that word, owner?

22 A. Well, my understanding is that  
23 there is another place, and when you file for  
24 registration, that expresses that even though  
25 someone files for the initial registration or

owns it, puts themselves in an as the owner,  
there is a place where they say they where  
actually registering on behalf of someone. That  
is a separate issue, and I didn't know where to  
locate that, and, like I said, it wasn't on this  
page. I didn't think it was anything out of the  
ordinary.

Q. I understand about this, now being  
able to register for someone else. Did you know  
that in March 2006?

A. Yes, I did. He said he was  
registering for me, and that goes back to  
November of 2004, 2003, when we spoke.

Q. I'm talking about the space on the  
application that says, you are registering for  
someone else.

MR. MORETTI: What about it?

MR. LEAVITT: Of that in 2006.

MR. MORETTI: Of what?

Q. This space on the application that  
says you are registering for someone else.

A. At this particular point, when this  
e-mail came there?

Q. Yes.

A. No.

1 Q. So you didn't know that there was a  
2 space where you can say, I am applying for  
3 someone else?

4 A. I didn't know that you could put  
5 that, someone -- where it went -- I did not have  
6 any clue as to where it went. I would not have  
7 thought anything out of the ordinary anywhere on  
8 this.

9 Q. Going back to the e-mail, that last  
10 sentence of the second paragraph. Is there any  
11 reason you used the word "yours," as opposed to  
12 ours?

13 MR. MORETTI: What are you referring  
14 to?

15 MR. LEAVITT: This last sentence. We  
16 have found yours, which I have a copy of that,  
17 that refers to the registration at the trademark  
18 office.

19 A. Well, I would -- I would mean it as  
20 I found yours, because he was the person who  
21 registered it. The end call of that was that he  
22 registered it for me, that was just the term,  
23 that was the one I found with your name on it.

24 Q. If you look at the next paragraph,  
25 the second sentence. "I have a call in to my



1 1927, which was -- had to do with his company, I  
2 guess, which didn't belong the Neet Feet anyway,  
3 and he said it didn't matter whether I used it  
4 or I didn't use it.

5 Q. You say he explained to you guys.  
6 "He" refers to Kim and Progress?

7 A. That was BETTA in China.

8 Q. The only thing he explained to you  
9 was about China?

10 A. Correct. He vaguely said what they  
11 did in China, which I don't really totally know  
12 100%. He looked at the chips and said the  
13 packaging is very pretty. We had a discussion,  
14 and I asked what's BETTA, and he said it was his  
15 grandmother's name or something to that effect.

16 Q. Now, you didn't ask anywhere in  
17 this e-mail if Milagros' name appeared in the  
18 trademark application, right?

19 A. No.

20 Q. You didn't ask why Progress  
21 Vantage's name was listed as the owner, right?

22 A. No, I did not. My prime objective  
23 after being hit with this was to try to get to  
24 the bottom of what was happening and resolve it,  
25 because this was sent to the president of

1 Macy's, and being a first time vendor with them,  
2 I could suffer ramifications based on that I was  
3 selling fraudulent goods. That was my prime,  
4 real concern, was to really head that off and  
5 solve my problem.

6 Q. You didn't, anywhere in this  
7 e-mail, say that Milagros owns the mark, right?

8 A. No.

9 Q. If you look further down, there is  
10 an e-mail from Lynn. She says: "Enclosed with  
11 our law firm agent in the USA." That was  
12 Christensen, O'Connor, Johnson, and Kindness,  
13 correct?

14 MR. MORETTI: This is on the first  
15 page.

16 MR. LEAVITT: It is.

17 MR. MORETTI: What are you referring  
18 to?

19 MR. LEAVITT: Two-thirds of the way  
20 down, there is, under thanks and regards, Irene,  
21 there is a heading, Lynn Wong says: "Hi, Irene,  
22 enclosed with our law firm agent in USA." I'm  
23 sorry. Strike that.

24 (Defendant's Exhibit-28 was marked  
25 for identification.)

1 Q. I placed before you a document  
2 marked for identification as Defendant's  
3 Exhibit-28. Do you see that document?

4 A. Yes.

5 Q. Did you have a chance to review it?

6 A. Yes.

7 Q. This is an e-mail string, the last  
8 e-mail on the third page was from you to Lynn  
9 Wong and William Wong, correct?

10 A. The last page?

11 Q. The last e-mail, I'm sorry, on the  
12 first page.

13 A. Okay. Yes.

14 Q. In Numbered Paragraph 1, there is a  
15 reference to Faye Tomlinson. Do you see that?

16 A. Yes.

17 Q. That was an attorney at -- strike  
18 that.

19 You testified earlier that there  
20 were -- that there was a different lawyer at  
21 Christensen O'Connor that you used.

22 A. Correct.

23 Q. That it was not the same person who  
24 was registering the mark, correct?

25 A. That is correct.

1 Q. You never had any agreement with  
2 Kim, right?

3 A. I didn't know Kim.

4 Q. So the only agreement that you had  
5 concerning the use of the BETTA mark was with  
6 Progress?

7 A. I didn't have an agreement with  
8 Progress.

9 Q. You had no agreement with Progress?

10 A. No, I did not.

11 Q. Okay. It was your testimony that  
12 in November, you went to Hong Kong and you had a  
13 conversation with William concerning the use of  
14 BETTA.

15 A. Concerning what was the -- where  
16 did it stand in its evolvement or did it belong  
17 to somebody or not belong?

18 Q. It is your testimony that that  
19 conversation involved him saying he was going to  
20 register it for you in the US, correct?

21 A. As part of our conversation, yes.

22 Q. But that is not an agreement of any  
23 kind?

24 A. No, I don't think so, because he's  
25 not doing it for himself, and I'm not -- I'm

1 thankful that he would help me, but we were  
2 friends.

3 Q. You had never heard of BETTA as a  
4 brand before you heard about it from Progress?

5 A. As a brand? It wasn't -- it was an  
6 establish brand. The name I heard from them,  
7 the name of it, the name BETTA.

8 Q. You learned of the name BETTA from  
9 Progress, right?

10 A. Yes.

11 Q. They were using BETTA in China,  
12 correct?

13 A. Yes, they had told me they were  
14 trying to drum up domestic business in China and  
15 they were using the BETTA name.

16 Q. And they told you they were trying  
17 to drum up business in Europe as well?

18 A. Not under BETTA.

19 Q. Not under BETTA?

20 A. They were, again, manufacturing.  
21 They were to go out to people who had brands to  
22 manufacture, and the same way I met him, he  
23 produced my goods. He was doing the same for  
24 various people in the European market.

25 Q. So is it your testimony that

1 Progress just said, go ahead, use BETTA?

2 MR. MORETTI: Objection to the  
3 characterization or form.

4 MR. LEAVITT: I asked a question.

5 MR. MORETTI: Is it her testimony  
6 that Progress just said, go ahead and use BETTA.

7 Q. Is it your testimony that Progress  
8 just gave you -- strike that.

9 I'll stick with the question. Is  
10 it your testimony that Progress just said, go  
11 ahead, Irene, use BETTA in the US?

12 MR. MORETTI: Object to the form.  
13 You can answer.

14 A. Read that question back for me.

15 (The question was read back by the  
16 court reporter.)

17 A. That's really not how it came  
18 about, in all honesty. There was, throughout my  
19 trying to find out what was the situation with  
20 BETTA, I never got a straight answer. When I  
21 went to Hong Kong, I found out the mark wasn't  
22 registered. It was my understanding the Wongs  
23 were not going to use it in the US because they  
24 had no means in the US to use it. I found out  
25 there was no registration. Kim Gray had no

1 registration, according to them, or nobody had  
2 it, and that I could go ahead and use the name,  
3 and I went ahead and used the name.

4 Q. So did William say to you, I'm not  
5 going to use BETTA in The United States?

6 MR. MORETTI: Objection to form. You  
7 can answer.

8 A. That really wasn't part of the  
9 conversation.

10 Q. Did William say to you, Progress  
11 Vantage is never going to use BETTA in the  
12 United States?

13 A. That was not part of the many  
14 conversations.

15 Q. So did he say it or did he not say  
16 it?

17 A. The issue was, was BETTA was  
18 available for use in the US, and that it was not  
19 tied to anybody, nor would it have been tied to  
20 anybody, and to that answer -- the answer was  
21 no. Nobody has it. I'm not really going to do  
22 much with it, so whatever, and that was  
23 basically it, and that was what I felt was my  
24 ability to go ahead and run with it for my own,  
25 and I would never have asked -- I told him point

1 blank, I was going to register it now that I  
2 knew I could go ahead, because it met my  
3 criteria, and that's when he said, you know  
4 what, you spent a whole lot of money on setting  
5 up your own business, I will register it for you  
6 to help you out, and, at that time, I didn't  
7 think anything wrong for a friend to do that for  
8 a friend, and I accepted that. I didn't  
9 question it. I accepted it. I came back later  
10 on, and when I found out it had not been  
11 registered, I did ask him. I was back for  
12 development during the summer, and I did ask  
13 him, you know, what was the story, and he  
14 claimed, well, I'm registering, trying to  
15 register in China. I never knew really whether  
16 it was registered or not. I can't attest to  
17 having seen any documents. In China, everybody  
18 does everything, and it is not worth whatever,  
19 and so I haven't decided what I'm going to do if  
20 it is profitable or whatever. I said, listen, I  
21 can't play around, I have been shipping goods  
22 with my mark for the last, I don't know at that  
23 time, it was April, May, June, July, maybe four  
24 or five months, and I said, I can't run the risk  
25 of having any problem, so I will go ahead and



1 proceed to register, and he said, no, no, no,  
2 I'll do it for you. When I returned to the  
3 States, sometime later that summer, he rang me  
4 up, and he said, I'm going to register. He  
5 wanted to know what I was going to have on it,  
6 and he took down the list, and I assumed -- I  
7 trusted him -- I assumed that he was going to go  
8 ahead and go forward with what he was going to  
9 do for me.

10 Q. You have described a series of  
11 conversations over the summer of 2004, correct?

12 A. A few conversations.

13 Q. Do you have any documentation,  
14 e-mails, letters, diary entries of any of these  
15 conversations?

16 A. No.

17 Q. Did you ever send -- strike that.  
18 You testified that William asked  
19 you what kind of -- what you wanted on the  
20 application?

21 A. No. He didn't ask me what I wanted  
22 on the application. He asked me what kind of  
23 products did I want to have listed on the  
24 application.

25 Q. Did he ask you for pictures of

1 recounted conversations between you and  
2 attorneys at Christensen O'Connor. Is that not  
3 consultation in your mind?

4 A. Someone can give me their opinion  
5 or what they think I should do. When a letter  
6 needs to be rebutted and it is written, it is  
7 written. I don't understand how you are saying  
8 did I confer on this. I didn't confer. I gave  
9 them the information they requested to draw up a  
10 letter, and that's what they did.

11 (A brief recess was taken.)

12 Q. Looking at the second paragraph of  
13 Exhibit-33. See where it says: "Milagros'  
14 continuous and exclusive use of the name and  
15 mark BETTA also enjoys express authorization  
16 from the past acting principal of the BETTA Shoe  
17 Company, established in Australia in 1927,  
18 Mr. Kim Gray." You see that?

19 A. I see that.

20 Q. Did you ever have express  
21 authorization from Kim Gray in The United  
22 States?

23 A. I didn't know Kim Gray, so the  
24 answer would be no, and when this letter was  
25 sent, my conversation after the fact was, you

1 know, this is not necessarily true, because I  
2 didn't -- I don't know Kim Gray and you have a  
3 position of -- in your position, the letter that  
4 Kim Gray wrote before Goddess and the response  
5 that I was given by Mr. Walters was okay. I  
6 realize that now, but the point is that the  
7 issue here is not that Mr. Gray could give  
8 authorization in the US, because Mr. Gray really  
9 had no authorization in the US to give, and we  
10 let it go at that. I mean...

11 MR. MORETTI: I want to caution the  
12 witness about disclosing discussions with  
13 counsel. Those are privileged, and you do not  
14 have to disclose those, and I only do it because  
15 she just discussed a discussion she had with her  
16 counsel, so I don't think I'm doing anything  
17 improper here. You can ask the question, but  
18 I'm giving her the instruction.

19 A. Well, I would like to take that  
20 back.

21 MR. MORETTI: That has been already  
22 discussed, but going forward, you are not to  
23 disclose discussions with your lawyer.

24 Q. I would like to ask if any of those  
25 conversations you had with Mr. Walters were in

1 Q. Can you go to the last sentence of  
2 that paragraph, please.

3 A. Yes, I see the sentence.

4 Q. "The claims made by Milagros to a  
5 connection to the BETTA of Australia are  
6 absolutely true as Mr. Gray can confirm." There  
7 are no connections between Milagros and the  
8 BETTA of Australia, right?

9 A. That's correct.

10 Q. Now, we've gone through some  
11 correspondence between you and William and you  
12 and Lynn about the Neet Feet controversy, right?

13 A. Yes.

14 Q. And they gathered some documents  
15 from Mr. Kim Gray to try to resolve the Neet  
16 Feet controversy.

17 A. They supplied information on.

18 Q. They --

19 A. -- they supplied background  
20 information regarding what the relationship of  
21 Neet Feet was to BETTA.

22 Q. They supplied the 1997 Mr. Kim Gray  
23 letter, right?

24 A. I don't know whether they supplied  
25 it or Kim Gray supplied it. It was supplied.

1     what you were doing. Is that what your  
2     testimony is?

3             A.     I simply made a statement that I  
4     was trying, in a nice way, to more or less say,  
5     don't tell me how to run my business. I know  
6     how to run my business basically. That's what I  
7     was saying, in a nice way, that is just a  
8     statement I made, like I said, that was my nice  
9     way of putting it to them.

10            Q.     Now, if you go down on page 2:  
11     "Dear Irene..." That's from Lynn?

12            A.     Um-hum.

13            Q.     You see that?

14            A.     Um-hum.

15            Q.     "By the way, we don't want to use  
16     BETTA for discounter, you can work on other  
17     alternatives." Do you see that?

18            A.     Yes, I do.

19            Q.     You understood that Lynn was  
20     requesting that a certain -- strike that.

21                    What is a discounter?

22            A.     Lower priced store.

23            Q.     And you understand Lynn was saying  
24     that Progress didn't want to use BETTA for the  
25     lower priced stores?

1           A.       No. I don't understand any such  
2       thing. I had had a conversation -- this goes  
3       back to a conversation I had with William when  
4       he was in the States, and his question to me was  
5       if BETTA is your brand, why would you want to  
6       put it on somebody who is a mass merchant  
7       discounter, and I explained to him that anybody  
8       who has a brand, more or less, takes and does  
9       that in various tiers, and if you want to do  
10      volume business, huge containers of a few  
11      styles, few colors, then we would have a lower  
12      tier, which is what I created, a better BETTA  
13      basic brands that I used for the Ross goods, a  
14      Ross order, that we were dancing with Ross for.

15           Q.       And Progress told you they didn't  
16      want BETTA to be in the discounter program?

17           A.       I don't see it as that. As I have  
18      already stated, when William came, he asked me,  
19      well, BETTA is your BETTA brand, I'm selling it  
20      to Macy's, being a friend, he gave me advice,  
21      whether I asked for or it or not, as I would  
22      give him advice or he would ask my for advice,  
23      and that's what friends do. He says, but why do  
24      you want to take BETTA if you are selling it to  
25      Macy's and put it on Ross, and I explained to

1 him, again, as I repeat, that people have tiers  
2 of their brands, and, therefore, I would make a  
3 lower tier for my brand that would be used for  
4 the Rosses of the world.

5 Q. I understand the substance of your  
6 conversations with William.

7 A. Yes.

8 Q. In this e-mail, the sentence we are  
9 talking about, Progress is telling you that they  
10 do not want BETTA used in the discounter  
11 program?

12 A. Right. It is of no relevance to  
13 me. They don't control my brand. It means  
14 nothing to me. And I did ship Ross under BETTA  
15 Basics.

16 Q. And, now, this e-mail here, on the  
17 first page is your response, correct?

18 A. No. This is not a response. It is  
19 actually an order proposal for what they were  
20 interested in.

21 Q. I'm sorry. Looking at the first  
22 page.

23 A. At the top of the page?

24 Q. Yes.

25 A. Yes, that's exactly what this is.

1 We have the bills that show no work after May  
2 2nd. I'm wondering if that refreshes your  
3 recollection as to when you gave them the  
4 description to do the further investigation.

5 A. Within my conversations with my  
6 attorney that I believe are privileged.

7 MR. LEAVITT: I'm just asking a date.

8 MR. MORETTI: He's just asking if  
9 these documents refresh your recollection as to  
10 any other discussions you may have had with your  
11 lawyers.

12 A. No. Uh-uh. They don't.

13 Q. Prior to November -- strike that.

14 Prior to December 2006 --

15 A. December 2006. Okay.

16 Q. -- did you ever make an oral  
17 statement or a written statement to Progress  
18 Vantage, William Wong, or Lynn Wong to the  
19 effect that Milagros was the legal owner of the  
20 BETTA mark in The United States?

21 MR. MORETTI: Verbal, oral or in  
22 writing?

23 MR. LEAVITT: Yes.

24 MR. MORETTI: I'll object to the  
25 form, but you answer it if you understand it.



1           A.           No.

2                   MR. MORETTI:   Your answer is no?

3                   THE WITNESS:   Yes.   What was the  
4 question again?

5                   (The previous question was read back  
6 by the court reporter.)

7           A.           Actually, I will retract that now.  
8 December 26 -- that is after William sent an  
9 e-mail to me saying that I couldn't use the mark  
10 any longer, and I had already spoke to counsel  
11 on whatever, I'm not talking about whatever was  
12 privileged. I did have one conversation with  
13 William in which I asked him what was going on,  
14 because I'm the one that established the mark.  
15 I'm the one that has been using it, and under my  
16 understanding, I had the rights to the mark, so  
17 that would be probably after, sometime in  
18 November, I can't remember the exact date.

19                   MR. MORETTI:   Of what year?

20                   THE WITNESS:   Of 2006.

21           Q.           And that was after you received an  
22 e-mail from William telling you that he didn't  
23 want you to use the BETTA mark anymore, right?

24           A.           That's correct.

25           Q.           Prior to December 26, 2006, no

1 written, no oral statements?

2 A. Nothing with regards to --

3 Q. With regards to?

4 MR. MORETTI: I just -- all I want  
5 you to do is -- the question sort of ended as if  
6 they never had a discussion, and I'd really  
7 appreciate -- I know it is late. Let the record  
8 reflect, we have been here a long time, I just  
9 want to make sure the record is still clear.

10 MR. LEAVITT: I appreciate that. I  
11 apologize for the allusion, which usually is a  
12 spot to take out letters as opposed to whole  
13 phrases.

14 Q. Prior to December 26 of 2006, it is  
15 your testimony that you never made any  
16 statement, oral or written, to William Wong,  
17 Lynn Wong or anyone at Progress to the effect  
18 that Milagros was the legal owner of the BETTA  
19 trademark in The United States?

20 A. I felt that it was -- I had no  
21 reason to discuss it. I felt that I owned the  
22 mark and I could do what I wanted with it.

23 Q. I'm going to repeat the question  
24 until I get an answer to it.

25 (The question was read back by the

1 court reporter.)

2 Q. I understand you didn't -- you're  
3 testifying you didn't think you had a reason to  
4 make such a statement, but the fact is, you  
5 didn't make such a statement, right?

6 MR. MORETTI: During the time period  
7 that you...

8 MR. LEAVITT: Related to the question  
9 that I just asked.

10 A. During 2006?

11 Q. And any --

12 A. During the whole entire time of --  
13 I'm sorry.

14 MR. MORETTI: Listen to his question.

15 Q. You testified that on December 26,  
16 2006, you made a statement to William to the  
17 effect that Milagros was the legal owner of the  
18 trademark, BETTA, in The United States?

19 A. I said that -- I didn't say  
20 December -- I said sometime after the receipt of  
21 his e-mail in November. Anyway, after I did  
22 have conversations with him in which I did say I  
23 had the rights to it.

24 Q. After you received the e-mail from  
25 him?

1 A. Correct.

2 Q. Prior to receiving the e-mail from  
3 William?

4 A. Yes.

5 Q. You did not make any such  
6 statements to William, Lynn or Progress Vantage?

7 A. I don't believe I did, but I don't  
8 feel that it was necessary to do so.

9 Q. Okay.

10 (Defendant's Exhibit-42 was marked  
11 for identification.)

12 Q. I place before you what has been  
13 identified as Defendant's Exhibit-42. Do you  
14 have that document in front of you?

15 A. Yes.

16 Q. Do you know -- can you tell me what  
17 that series of documents is?

18 A. I really have no idea. I have no  
19 idea. Never saw it before.

20 Q. When Progress would send samples to  
21 you, to Milagros --

22 A. Um-hum.

23 Q. -- how were those sent?

24 A. Sometimes via my consolidator or  
25 sometimes via Fed-Ex, UPS, whichever way they